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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

|                          |   |                            |
|--------------------------|---|----------------------------|
| THOMAS C. ASZMUS,        | ) |                            |
|                          | ) |                            |
| Plaintiff,               | ) |                            |
|                          | ) |                            |
| vs.                      | ) |                            |
|                          | ) |                            |
| JAY R. McINNIS, and      | ) |                            |
| COAST NATIONAL INSURANCE | ) |                            |
| COMPANY                  | ) |                            |
| Defendants.              | ) | Case No. 3:14-cv-00166-SLG |
| _____                    | ) |                            |

**AMENDED COMPLAINT**

COMES NOW the Plaintiff, Tom Aszmus, by and through counsel of record, and for his Complaint against Defendants Jay R. McInnis and Farmers' Insurance Group of Companies, states as follows:

1. Plaintiff Thomas C. Aszmus ("Aszmus") is a resident of the State of Alaska.
2. Unless otherwise noted, the events in this action occurred in the Third Judicial

District such that venue is appropriate.

3. It is Plaintiff's information and belief that Coast National Insurance Company ("Coast National") has sufficient contacts with Alaska such that jurisdiction by an Alaska court is appropriate.

4. It is Plaintiff's information and belief that this matter arises out of acts and omissions of Defendant Jay R. McInnis ("McInnis") related to events in Alaska such that jurisdiction by an Alaska court is appropriate.

5. On or about October 7, 2010, Plaintiff Aszmus was injured in a motor vehicle accident as a result of the negligence of Matthew K. Avery ("Avery") and brought suit against Avery in the action entitled Aszmus v. Avery, Case No. 2KB-11-210 CI filed in Kotzebue, Alaska. A true and correct copy of the Complaint in the action is attached as Exhibit A to this Complaint.

6. It is Aszmus' information and belief that Defendant McInnis was an agent of Defendant Coast National, that Defendant McInnis sold Avery a motor vehicle insurance policy, Number G0034678880, issued by Defendant Coast National, and that McInnis' actions were at all times in the course and scope of his agency relationship with Defendant Coast National.

7. It is Aszmus' information and belief that the Policy Number G0034678880 provided coverage for the October 7, 2010 motor vehicle accident and Avery's liability in the Aszmus v. Avery action, including but not limited a duty to defend Avery from the allegations made by Aszmus in that action.

8. It is Aszmus' information and belief that Avery tendered defense of the action to Defendant Coast National through its agent, Defendant McInnis. A true and correct copy of this tender is attached as Exhibit B to this Complaint.

9. It is Aszmus' information and belief that neither Defendant Farmers' Insurance nor Defendant McInnis acknowledged such tender.

10. Defendant Coast National failed to defend Avery in the Aszmus v. Avery action, breaching its duties to Avery under Policy Number G003467880.

11. In order to mitigate the consequences of this failure to defend, Avery entered into a settlement in which he agreed to confess Judgment in favor of Plaintiff Aszmus in the amount of \$3,581,371.85 and assigned his rights against Defendants Farmers Insurance and Defendant McInnis. A true and correct copy of this Settlement Agreement is attached as Exhibit C to this Complaint. Pursuant to the Settlement Agreement, judgment has been entered against Avery. A true and correct copy of this Judgment is attached as Exhibit D to this Complaint.

**SECOND CAUSE OF ACTION AGAINST COAST NATIONAL AND  
MCCINNIS  
BREACH OF FIDUCIARY DUTY**

12. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 11 of this Complaint.

13. By virtue of their sale of the Policy Number G0034678880 to Avery, Defendants Coast National and Defendant McInnis owed Avery a fiduciary duty to respond to his tender.

14. The failure of Defendant Coast National and Defendant McInnis to respond to Avery's tender constitutes a breach of this fiduciary duty such that they are liable for Avery's losses, including but not limited to the unsatisfied portion of the \$3,581,371.85 judgment and any non-economic loss associated with such breach.

Wherefore, Plaintiff requests the following relief:

1. A judgment against Defendants Coast National and McInnis in the amount of Avery's losses.
2. Aszmus' attorneys' fees and costs associated with this action.
3. Such other relief as the Court deems appropriate.

DATED at Anchorage, Alaska this 11<sup>th</sup> day of November, 2014.

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